IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 758 of 2005

WITH

SPECIAL CRIMINAL APPLICATION No. 745 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

VIJAYKUMAR BABUBHAI PATEL - Applicant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :
MS SHAILI A KAPADIA for Applicant(s) : 1,
MR MUKESH PATEL, APP for Respondent(s) : 1,
MR HS TOLIA, for Respondent(s) : 2,
RULE NOT RECD BACK for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 30/08/2005

COMMON ORAL JUDGMENT

1.The petitioner in both these petitions is the original complainant and he has filed one private complaint with respect to one Hyundai Santro Car bearing Registration No. GJ – 7 – AG – 2545 before Judicial Magistrate First Class, Chikli for the offence punishable under Section 406, 420 & 114 of the Indian Penal Code. The Magistrate has passed an order for inquiry under Section 202 (1) of the Criminal Procedure Code and to file a report within 30 days before the Court. The Magistrate, thereafter, by an order dated 21.10.2004 issued process under Section 204(1)(b) against the accused for the offence punishable under Section 406, 420 & 114 of I.P.C. The vehicle in question was found from the possession of the respondent No. 2.

2.During the pendency of the said complaint, the petitioner has moved one Cri. Misc. Application No.

103 of 2004 under Section 451 of Cr. P.C. to get back the possession of the said Car. The said Cri. Misc. Application was allowed by the Magistrate by an order dated 27.12.2004 and the possession was given to the petitioner – original complainant. The respondent No. 2 in the present petitions has also filed Cri. Misc. Application No. 107 of 2004 under Section 451 of Cr. P.C. to get back the possession of the said Car. The said application was rejected by the Magistrate by an order dated 27.12.2004.

3. Being aggrieved by the said order of the Magistrate, the respondent NO. 2 has filed Criminal Revision Application Nos. 6 & 7 of 2005 before the District & Sessions Judge, Navsari challenging the order passed in Cri. Misc. Application Nos. 103 of 2004 as well as 107 of 2004. The Learned Sessions Judge vide his two separate orders dated 18.05.2005 allowed the said revisions filed by the respondent No. 2 and directed the petitioner to hand over the possession of the said Car to the respondent No. 2

subject to certain conditions mentioned therein.

4.Being aggrieved by the said two orders passed in Revision Applications, the petitioner has filed these two Special Criminal Applications before this Court.

5.Ms. Shaili A. Kapadia, learned advocate appearing for the petitioner in both these petitions has submitted that the petitioner is the owner of one Hyundai Santro Car bearing Registration No. GJ – 7 – AG – 2545. The said Car is in the name of the petitioner in R.T.O's office and is also being insured regularly. It was agreed between the petitioner and one Mr. Sunil P. Kadam, respondent No. 3 in the present petitions that the petitioner wanted to sell his Car and the price was agreed at Rs. 2,85,000/-. The respondent No. 3 has paid Rs. 40,000/- in cash at that time and the possession of the Car was given to him. It was further agreed that the respondent No. 3 would pay Rs. 2,45,000/- within a period of 10 days when he would approach

him for signature of T.T. Forms. The respondent No. 3 has not made any payment to the petitioner and hence, the petitioner has filed criminal complaint before the Judicial Magistrate, First Class, Chikli. Pursuant to the order passed by the Magistrate in the said complaint, the inquiry was started and Car was found by Investigating Officer from the possession of the respondent No. 2 on 29.09.2004. It is the case of the respondent No. 2 that he has purchased the said Car from respondent No. 3 and entire payment has been made by him to the respondent No. 3.

6.Ms. Kapadia has further submitted that the possession of the Car was rightly given by the Magistrate to the petitioner being the real owner of the Car. The learned Sessions Judge has exceeded his jurisdiction while disturbing the order passed by the Magistrate as it is not only contrary to the facts on record but also contrary to the settled legal position. In support of her submission, she relied on the decision of the

Hon'ble Supreme Court in the case of **Rajendra Prasad V/s. State of Bihar, 2001 (10) S.C.C. 88** wherein the Hon'ble Supreme Court has observed that the Court is not deciding the question as to the title of the vehicle in dispute nor the correctness of the rival versions regarding the transactions relating to the vehicle. The Court's anxiety is only that the vehicle should not remain in the compound of the Police Station exposed to heat and cold because the automobile is likely to be lost of all in such situation. To avert this situation, the Court was inclined to entrust it temporarily to the appellant who is the ostensible name-holder in the Registration Certificate. The custody of the vehicle with the appellant will be on behalf of the Court and the said arrangement was only till the stage when the Court passes the order regarding disposal of the property on conclusion of the trial. The Court has, therefore, directed the Trial Court to release the vehicle to the appellant on condition that the appellant will produce the original Registration Certificate as issued by the

Transport Office. The Court has also made it very clear that if it is a “duplicate”, the appellant must obtain a Certificate from R.T.O. That duplicate was issued from the Office. The applicant shall execute a bond in a sum of Rs. 2 Lacs with two solvent sureties that he will produce the vehicle back in the Court whenever required by the Court. On the basis of this judgment, Ms. Kapadia has submitted that the vehicle was rightly given to the petitioner who is the ostensible holder in the R.T.O.'s record.

7. She has further submitted that the Revisional Authority has committed an error while disturbing the finding given by the Magistrate. The Magistrate has in terms verified the Signatures on the Transfer Forms and found that it was not the signature of the petitioner. The verification of the signature by the Magistrate is permissible under Section 73 of the Evidence Act. For this purpose, she relied on the decision of the Hon'ble Supreme Court in the case of **Ajit Savant Majagavi**

V/s. State of Karnataka, AIR 1997 SUPREME COURT 3255 wherein it is held that Section 73 does not specify by whom the comparison shall be made. However, looking to the other provisions of the Act, it is clear that such comparison may either be made by a handwriting expert under Section 45 or by any one familiar with the handwriting of the person concerned as provided by Section 47 or by the Court itself. As a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature or handwriting and in the event of slightest doubt, leave the matter to the wisdom of experts. The Court has also made it very clear that this does not mean that the Court has not the power to compare the disputed signature with the admitted signature as this power is clearly available under Section 73. She has, therefore, submitted that the learned Sessions Judge is not right in saying that the Magistrate should not have undertaken the task of comparing the signatures on

the Transfer Form. She has, therefore, submitted that the order passed by the Revisional Authority should be quashed and set aside and the present petitions should be allowed.

8.Mr. H.S. Tolia, learned advocate appearing for the respondent No. 2 in both these petitions has submitted that the Revisional Authority has taken into consideration all the aspects of the matter and has rightly decided the matter in favour of respondent No. 2 and while deciding both the Revisions, the possession of the Car was ordered to be given to the respondent No. 2. He has further submitted that there is no dispute about the fact that the respondent No. 2 has purchased the Car in question from the respondent No. 3 who has originally purchased the said Car from the petitioner. There is also no dispute regarding the fact that the petitioner has handed over all the documents pertaining to the Car in question to the respondent No. 3 and from respondent No. 3, the said documents were received by respondent No. 2.

The only dispute is that the respondent No. 3 has failed to make the payment to the petitioner despite the fact that the respondent No. 2 has made the entire sale consideration of the Car in question to the respondent No. 3. The respondent No. 2 is, therefore, the bonafide purchaser for consideration and it cannot be said that the respondent No. 2 has obtained the possession of the Car illegally or unlawfully. The dispute between the petitioner and respondent No. 3 is of a civil nature and respondent No. 2 has nothing to do with the said dispute. The respondent No. 2 has produced before the learned Magistrate all the relevant documents in respect of the Car in question. The receipt showing the payment made by the respondent No. 2 to the respondent No. 3 was produced before the learned Magistrate. The Ration Card and Insurance Policy of the Car given by the petitioner to the respondent No. 3 were also produced. The R.T.O. Forms duly signed by the petitioner were also in possession of the respondent No. 2. The Police has collected the

R.C. Book from the respondent No. 2 otherwise the said R.C. Book was also given to the respondent No. 2 by respondent No. 3. All these documentary evidences undoubtedly prove that the respondent No. 2 has purchased the Car after payment of the entire sale consideration and hence, the respondent No. 2 is entitled to retain the interim possession of the Car in question.

9. In support of his submissions, Mr. Tolia has relied on the decision of this Court in the case of **Thakkar Mahendraprasad Bapalal and another V/s. The State of Gujarat and another, 1985 G.L.H. 61** wherein the petitioners were lawfully and voluntarily put into possession and custody of the Trucks by the complainant himself and in this context, this Court has held that at this stage, there is no material to come to the conclusion that the petitioners have committed any offence in respect of muddamal trucks of that the Opponent No. 2 – complainant is entitled to recover back the possession. The Court has further held that the

complainant may have his remedies for enforcing the terms of the dissolution deed, for recovery of monies, for indemnifying himself, or for recovery of possession of the Trucks but mere filing of the criminal complaint is no way to recover possession of the Trucks which he had voluntarily and lawfully transferred for valuable consideration and in which he has so far not invested a single rupee and in which the petitioners have invested more than Rs.2,50,000/-. Mr. Tolia has submitted that the ratio of this decision squarely applies to the facts of the present case as the petitioner has voluntarily transferred his Car to respondent No. 3 and received an amount of Rs. 40,000/-. He has agreed to part with the possession of the Car despite the fact that the balance amount of Rs.2,45,000/- was not received. While parting with the possession of the Car, the petitioner has handed over all the documents to the respondent No. 3. The respondent No. 2 has purchased the said Car from respondent No. 3 and paid the entire sale consideration. All the documents were also

received by respondent No. 2 to respondent No. 3. In this view of the matter, the respondent No. 2 is rightly considered to be in lawful possession of the Car in question and is, therefore, entitled to retain the interim custody of the Car during the pendency of the complaint.

10.With regard to the signature of the petitioner on the Transfer Forms, Mr. Tolia has submitted that the Magistrate should not have compared the signature. It is true that Section 73 of the Evidence Act empowers the Court to compare the signature at his own. It is rightly held by the learned Sessions Judge that learned Magistrate has committed an error while comparing the signatures without obtaining any report from the handwriting expert. The learned Sessions Judge has found that even if such comparison is made, it prima facie shows that the signatures on the Transfer Forms are the signatures of the petitioner. Mr. Tolia has, therefore, submitted that there is no error in the order passed by the learned Sessions Judge in two

Revision Applications filed by the respondent No. 2 and no interference is required by this Court while exercising its power under Article 227 of the Constitution of India and hence, both the petitions are required to be dismissed.

11.After having heard learned advocates appearing for the respective parties and after having gone through the impugned orders and the documentary evidences produced on record, the Court is of the view that the learned Sessions Judge has rightly allowed the Revision Applications filed by respondent No. 2. There were certain undisputed facts. The respondent No. 2 has purchased the Car in question from the respondent No. 3 and paid the entire sale consideration. All necessary documents are in possession of respondent No. 2. The petitioner has lawfully and voluntarily sold and transferred the Car in question to respondent No. 3 and possession with all documents was handed over to the respondent No. 3. The petitioner has also received part consideration of Rs. 40,000/- and

agreed to receive the balance consideration later on. Simply because the respondent No. 3 has failed to pay the balance consideration to the petitioner, it cannot be said that the respondent No. 2 is not in lawful possession of the Car. It is the dispute between the petitioner and the respondent No. 3 and petitioner has all the remedies available under the law to recover the balance consideration from the respondent No. 3. The provisions of Section 451 of the Criminal Procedure Code are invoked by way of an interim arrangement. The Criminal Case is still pending before the learned Judicial Magistrate and trial is not yet over. It is not possible at this stage to express any opinion as to whether there is any malafide intention or malicious motive in the mind of respondent No. 3 to cheat the petitioner in taking the possession of the Car without discharging the monetary liability. This is a dispute between the petitioner and respondent No. 3 and respondent No. 2 is in no way connected with the said transaction. He has purchased the Car from the respondent No. 3 after payment of full

consideration and after verifying the necessary documents. The respondent No. 2 is, therefore, bonafide purchaser with the consideration and he should not be deprived of possession of the Car in question. The learned Sessions Judge has also dealt with the legal issue at length in the impugned orders and the Court is in agreement with the finding arrived at by the learned Sessions Judge. The Court, therefore, does not see any justification to upturn the said finding. The petitioner is, therefore, directed to hand over the possession of the car in question to the respondent No. 2 within two weeks from the date of receipt of Writ from this Court or Certified copy of this order, whichever is earlier. However, the possession of the Car by the respondent No. 2 would be subject to the conditions laid down by the learned Sessions Judge in his order dated 18.05.2005 passed in Criminal Revision Application No. 7 of 2005.

12.With the aforesaid directions and observations,

both these petitions are accordingly disposed of. Rule discharged. Interim relief granted earlier stands vacated.

[K.A. PUJ, J.]

Savariya